

WWW.LIVELAW.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

WP(C).No.17635 OF 2020(D)

PETITIONER:

UNIMONI FINANCIAL SERVICES LTD.,
1ST FLOOR, AIRLINES BUILDING,
M.G. ROAD, KOCHI-682 011,
REPRESENTED BY ITS DIRECTOR AND CHIEF FINANCIAL
OFFICER, MR. KRISHNAN R.

BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
SMT.PARVATHY KOTTOL

RESPONDENTS:

1 IDBI BANK LIMITED
IDBI TOWER, WTC COMPLEX, CUFFE PARADE,
MUMBAI-400005 REPRESENTED BY ITS MANAGING DIRECTOR.

2 SPECIALISED CORPORATE BRANCH OF IDBI BANK
FIRST FLOOR, IDBI BUILDING, PANAMPILLY NAGAR,
PB NO.4253, KOCHI-682 033
REPRESENTED BY ITS DEPUTY GENERAL MANAGER.

R1 BY ADV. SRI.DEEPUN THAKKAN
R1 BY ADV. SMT.UMMUL FIDA
R1 BY ADV. SMT.LAKSHMI SREEDHAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01.12.2020, THE COURT ON 16.12.2020 DELIVERED THE FOLLOWING:

WWW.LIVELAW.IN
P.VASHA, J.

W.P.(C) No.17635 of 2020-D

Dated this the 16th day of December, 2020

J U D G M E N T

The Writ Petition is filed seeking the following reliefs:

“a. To declare that the demand made by the respondents to the petitioner for payment of an amount of Rs.11,00,000/- towards the alleged processing fee as per Exhibit P4 renewal offer, as a condition precedent inter alia for the return of original property documents belonging to the petitioner, is arbitrary and illegal.

b. To issue a writ of mandamus or any other appropriate writ, directing the respondents to do the following, without insisting on payment by the petitioner of Rs.11,00,000/- towards alleged processing fee or any other amount under Exhibit P4 renewal offer:-

1. To issue a 'No Dues Certificate' to the Petitioner.

2. To return to the Petitioner the original documents in respect of the petitioner's land bearing re-survey No.96/6 (old survey number 706/7) in block 5 of Thrikkakara North Village located at Edappally, Kochi.

3. To return to the Petitioner the original documents in respect of the Petitioner's office building bearing CTS No.72, 72/1 and 72/2 and survey No.21, Hissa No.2 situated at Andheri Kurla Road, Andheri (East), Mumbai;

4. To cancel and return to the Petitioner the personal guarantee provided as security for the credit facilities

AND

c. Grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary in the facts and circumstances of this case.”

2. The respondents have raised a preliminary objection with respect to the maintainability of the Writ Petition. According to the respondents, IDBI is not a State or an instrumentality of State or a body which falls within the purview of

WWW.LIVELAW.IN

Article 12 of the Constitution of India. It is stated that the respondent bank does not perform any public or statutory or sovereign function and it does not enjoy any monopoly in the banking and its function is confined to commercial activities like any other commercial bank. It is stated that though the respondent bank was registered as a banking company under the provisions of the Banking Regulation Act, 1949 and was categorised as Other Public Sector Bank by Reserve Bank of India as per letter dt.15.04.2005, after the majority of its shareholding was divested from the Central Government, it is now recategorised as a private sector bank w.e.f 21.01.2019 for regulatory purpose. It is stated that the Industrial Development Bank of India Act, 1964 provided for establishment of a development bank as contemplated in Section 2(b) r/w Section 3 of the Act. The shareholding of the said development bank was with the Central Government. Under Section 5 of the 1964 Act, the management and control of the development bank was to be exercised by the Board of Directors. Thereafter the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 was enacted providing for transfer and vesting of the business of the development bank with the respondent bank in view of the need for giving the respondent bank sufficient autonomy to compete at par with other banks. It is stated that the Central Government does not have any deep or pervasive control over the functioning of the respondent bank and the policy decisions of functioning of the bank as well as its administrative decisions are done by the Board of Directors as in the case of any other private sector company. No ratification or approval or even reference is required from the

Central Government. In the absence of any administrative or functional control by the Central Government, it is stated that it cannot be said that the respondent bank is a State or an instrumentality of State and therefore not amenable to the writ jurisdiction of this Court.

3. Relying on the judgment of this Court in ***K.K.Saxena v. International Commission on Irrigation and Drainage and Ors.*** [2015 (4) SCC 670], ***Federal Bank Ltd. v. Sagar Thomas & Ors.*** [2003 (10) SCC 733], the judgment in W.P(c).No.8736(W) of 2009 of Calcutta High Court, ***State of U.P. v. Bridge & Roof Co. (India) Ltd.*** [1996 KHC 950] and ***Bareilly Development Authority v. Ajai Pal Singh*** [1989 KHC 270] it is stated that there is no element of public duty involved in the matter and no writ will lie in respect of commercial transaction. The judgement in ***Rajbir Surajbhan Singh v. The Chairman, Institute of Banking Personnel Selection, Mumbai*** [2019 (14) SCC 189] was also relied on in support of the contention that the Writ Petition is not maintainable.

4. Sri. Paulose, the learned counsel for the petitioner relying on the judgments in ***R.D.Shetty v. International Airport Authority*** [(1979) 3 SCC 489], ***Sukhdev Singh v. Bhagatram*** [(1975) 1 SCC 421 (Para.50, 61, 67)], ***M/s.Dwarkadas Marfatia & Sons v. Board of Trustees, Bombay Port*** [AIR 1989 SC 1642], ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*** [(2002) 5 SCC 111] etc. argued that till December, 2018 the Government of India held 50.12% shares and after 2018 the shares of Government of India has been

reduced to 47.11%; whereas the LIC holds the share of 51%. It was argued that even as per the order passed by the RBI, the IDBI is treated as a private bank only for regulatory purposes; therefore, it would continue to be a public sector bank for all other purposes; the only difference is that LIC has got more shares. It was argued that LIC is a statutory establishment and therefore it cannot be said that no writ will lie. Relying on the judgment of this Court in *Lonankutty Antony v. Joint Registrar of Co-operative Societies* [2016 (2) KLT 281] and the judgment of the Calcutta High Court in W.P(C).No.29749 of 2008 against Bank of Bengal it was argued that IDBI is one controlled by the Central Government and it is always under the watch of Central Vigilance Commission.

5. At the same time, the learned counsel for the respondent pointed out that the Writ Petition, which is filed as against the collection of processing charges arises out of a purely contractual transactions, for which the remedy lies before a civil court or Ombudsman and the relationship of the petitioner and the respondent is that of a banker and a customer.

6. I have considered the rival contentions. In paragraph 1 of the Writ Petition, the petitioner has claimed that the respondent Bank comes under the purview of State under Article 12 of the Constitution of India and is hence amenable to writ jurisdiction on the ground that 47.11% of shares are held by the President of India and 51% of the shares are held by the Life Insurance Corporation of India and therefore that would indicate the deep and pervasive

control of the Government over the affairs of the respondent. It is further stated that the activities of the respondent is of public importance. As against the said contention, the respondents have in the preliminary objection stated that consequent to the enactment of Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 the Bank is given sufficient autonomy. In para.7 of the objection the respondents have stated the following:

“7. Thus, the Central Government does not have deep or pervasive control over the functioning of the Respondent Bank. The policy decisions of functioning of Respondent Bank as well as its administrative decisions would all be done by the Board of Directors as is done in any other private sector company. These decisions are not required to be referred or approved or ratified by the Central Government. In the absence of any administrative or functional control by the Central Government, much less a control which is deep or pervasive in nature, is the most pertinent indicator that Respondent Bank is not a State or an instrumentality of the State and therefore not amenable to the writ jurisdiction of this Hon'ble Court.”

The petitioner has not filed any reply to the said objection, though it was argued that the deep and pervasive control vests in Government.

7. It is not disputed that the Bank was originally established under 'The Industrial Development Bank of India Act, 1964' or that the said Act is repealed by the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003. As per Section 3 of the 2003 Act, undertaking of the Development Bank got vested in the Company. Reserve Bank has issued a letter dated 14.03.2019 to the effect that the Bank is categorised as a Private Sector bank for regulatory purposes with effect from 21.01.2019.

8. Though Sri. Paulose argued that the respondent is a State under

Article 12, relying on the judgment in ***RD Shetty's*** case (*supra*), it is seen that there is nothing to show that there was/is deep and pervasive control of the Government over the respondent. I would examine the applicability of the judgments relied on by both sides.

9. In the judgment in ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi***: (1975) 1 SCC 421 relied on by Sri. Paulose, the Apex Court was considering the question of removal of employees in statutory Corporations, who are governed by the regulations framed under the respective Acts (ONGC Act/Industrial Finance Corporation Act/LIC Act) and whether those Statutory Corporations were authorities under Article 12 of the Constitution of India. But in that case the Apex Court found the pervasive control of the Central Government over all those Corporations. The petitioner cannot claim that there is deep and pervasive control over the respondent merely on the basis of those factual findings in respect of those Corporations.

10. In ***Dwarkadas Marfatia and Sons'*** case (*supra*)-the next judgment relied on by Sri. Paulose, the Apex Court was considering the scope of judicial review of the action of the Board of Trustees of the Port of Bombay, in evicting its tenant and inducting there another tenant. It was held therein that being a public body it must act in public interest even in respect of its dealing with its tenant and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. But no objection is seen to have raised in that case as to whether the

Bombay Port Trust was an authority under the State.

11. In *Pradeep Kumar Biswas*'s case (*supra*) the Apex Court after analysing a series of judgments and the tests to be employed, held that in order to arrive at a finding that a body is a State under Article 12, it should be financially, functionally and administratively dominated by or under the pervasive control of the Government. When the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

12. In the judgment in *Lonankutty Antony v. Joint Registrar of Co-operative Societies*: 2016(2)KLT 281, relied on by Sri. Paulose, the question of maintainability is not seen raised. Moreover, it appears that the title deeds were retained with the permission of the Joint Registrar of Cooperative Societies. Therefore, no reliance can be placed on it.

13. From the judgment of the Calcutta High Court in W.P(c).No.29749 of 2008, relied on by the learned Counsel for the petitioner, also it is seen that the respondent Bank did not even file a counter affidavit in that Writ Petition. Apparently the question of maintainability was not raised. It is also seen that relief was sought against nationalised banks.

14. At the same time, the judgments relied on by Sri. Deepu Thankan would support his arguments.

15. In *Federal Bank v. Sagar Thomas* : (2003)10 SCC 733 the Apex Court held that the business of banking does not fall within the expression “public

duty” and hence a Writ Petition would not lie under Article 226 of the Constitution of India.

16. In ***K.K. Saksena v. International Commission on Irrigation & Drainage***: (2015) 4 SCC 670, the Apex Court found that in order to determine the maintainability of a Writ Petition under Article 226 of the Constitution of India the following questions are to be answered:

- (a) Whether a private body which is a non-governmental organisation partakes the nature of public duty or State action?
- (b) Whether there is any public element in the discharge of its functions?
- (c) Whether there is any positive obligation of a public nature in the discharge of its functions?
- (d) Whether the activities undertaken by the body are voluntary, which many a non-governmental organisation perform?

It was found that the respondent therein would not be amenable to writ jurisdiction under Article 226 of the Constitution of India, as there was no obligation for it to discharge activities which were statutory or of public character and that the activities were undertaken by it voluntarily. In ***Rajbir Surajbhan Singh v. Institute of Banking Personnel Selection***: (2019) 14 SCC 189 it was held in para.14 as follows:

“14. *The respondent – Institute has been set up for the purpose of conducting recruitment for appointment to various posts in Public Sector Banks and other financial institutions. Applying the tests mentioned above, we are of the opinion that the High Court is right in holding that the Writ Petition is not maintainable against the Respondent. Conducting recruitment tests for appointment in banking and other financial institutions, is not a public duty. The Respondent is not a creature of a statute and there are no statutory duties or obligations imposed on the Respondent.*

15. *It is true that the Governor of Reserve Bank of India and the Chairmen of certain public sector banks along with the Joint Secretary, Banking Division, Ministry of Finance are members of the governing body of the respondent Institute. There is no dispute that the respondent is not constituted under a statute. It is also not disputed that*

WWW.LIVELAW.IN

the respondent does not receive any funds from the Government. The respondent is not controlled by the Government. The letter dated 20-9-2010 produced by the appellant along with the rejoinder-affidavit does not show deep and pervasive control by the Government of India. The question is whether the Council of Scientific and Industrial Research fell under “other authorities” within the meaning of Article 12 was referred to a seven-Judge Bench of this Court. (See Pradeep Kumar Biswas v. Indian Institute of Chemical Biology).”

It was held therein that the IBPS was not amenable to writ jurisdiction under Article 226 of the Constitution of India as it was not discharging any public function as its activity of conducting the selection process for appointment to Banks was purely voluntary and not out of any statutory obligation. After analysing the aforesaid judgments, I have in ***Girish G & another v. State of Kerala & others*** [2020 KHC 289: ILR 2020 (2) Ker 676], held that CIAL is not an authority under Article 12 of the Constitution of India and no writ will lie against it for enforcing personal contracts, while considering the validity of the orders terminating services of certain employees.

17. The Division Bench of this Court has after elaborate analysis of various judgments on the issue, in the judgment in ***Sleebachan v. State of Kerala***: 2020 (4) KLT online 1024: 2020(5)KLT SN.11, held that Bank is not performing any public duty and hence a Writ Petition is not maintainable.

18. In the present case, the petitioner is challenging the demand made by the respondents towards processing fee of an alleged credit facility and also relating to withholding of the title deeds of the properties which were mortgaged/given in security. Providing of credit facility or providing of loan on the strength of title deeds given in security cannot be said to be done in discharge

WWW.LIVELAW.IN

of any public function, even in a case where it is made by a Public Sector undertaking/Bank and especially when it arises out of contractual transactions entered into between the parties and the bank.

19. I am of the view that even if the Bank is a public sector bank, demand for processing fee or withholding of title deeds towards security cannot be said to be one involving any element of public duty. In the above circumstances, I am of the view that the Writ Petition is not maintainable under Article 226 of the Constitution of India.

Writ Petition is accordingly dismissed.

Sd/- **(P.V.ASHA, JUDGE)**

rtr/

WWW.LIVELAW.IN
APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1** A TRUE COPY OF THE SANCTION LETTER DATED 3.12.2018 RECEIVED FROM THE 2ND RESPONDENT TO THE PETITIONER, ALONG WITH THE TERMS AND CONDITION OF THE FACILITY.
- EXHIBIT P2** A TRUE COPY OF THE STATEMENT OF ACCOUNT SHOWING A DEBIT OF RS.15,85,523 TOWARDS PROCESSING CHARGE.
- EXHIBIT P3** A COPY OF THE COUNTER AFFIDAVIT AND IA NO.1 OF 2020 IN WPC NO.9848/2020 DATED 9.6.2020 FILED BY THE PETITIONER TO VACATE THE INTERIM ORDER.
- EXHIBIT P4** A COPY OF THE LETTER DATED 12.6.2020 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER WITH RESPECT TO RENEWAL CUM REDUCTION OF WORKING CAPITAL FACILITIES.
- EXHIBIT P5** A COPY OF THE BANK STATEMENTS EVIDENCING PAYMENT OF AMOUNTS DUE UNDER EXHIBIT P1 CREDIT FACILITIES.
- EXHIBIT P6** A TRUE COPY OF THE ORDER DATED 19.6.2020 IN WPC NO.9848 OF 2020.
- EXHIBIT P7** A TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 23.6.2020 IN RESPONSE TO EXHIBIT P4.
- EXHIBIT P8** A COPY OF THE EMAIL DATED 6.7.2020 FROM THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P9** A TRUE COPY OF THE EMAIL DATED 10.7.2020 FROM THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P10** A TRUE COPY OF THE EMAIL DATED 10.7.2020 RECEIVED FROM THE 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P11** A TRUE COPY OF THE EMAILS DATED 10.7.2020 RECEIVED FROM THE 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P12** A TRUE COPY OF THE LETTER DATED 3.8.2020 FROM THE PETITIONER TO THE RESPONDENT.